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Attorneys for Defendant  
THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA, INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

DOMINIQUE OSBORNE, on her own  
behalf and on behalf of a class of  
similarly situated persons pursuant to  
F.R.C.P. 23 and 23 U.S.C. §216, and on  
behalf of the General Public,

Plaintiffs,

v.

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA, a New  
Jersey Corporation,

Defendant.

Case No. CV10-2465 JFW (CWx)

*The Hon. John F. Walter*

**JOINT REPORT OF PARTIES'  
EARLY MEETING OF COUNSEL  
PURSUANT TO FED. R. CIV.  
PROC. 26(f)**

Date: June 28, 2010  
Time: 8:30 a.m.  
Courtroom: 16

Complaint Filed: April 5, 2010  
Trial Date: Not Set  
Discovery Cutoff: Not Set  
Motion Cutoff: Not Set

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Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Local Rule 26-1 of the United States District Court, Central District of California, and the Order issued by the Honorable John F. Walter on May 13, 2010, Plaintiff Dominique Osborne (“Plaintiff”) and Defendant The Prudential Insurance Company of America, Inc. (“Defendant”) (collectively, the “Parties”) hereby submit their Joint Report of Parties’ Early Meeting of Counsel as follows:

**I. DATE OF THE PARTIES’ MEETING**

Counsel for the Parties held meet and confer discussions on May 26, June 2, and June 4, 2010. These meetings occurred more than 21 days prior to the scheduling conference set by the Court. Counsel for the Parties also arranged for the disclosures required by F.R.C.P. 26(a)(1) to be completed on or before June 11, 2010.

**II. NOT A COMPLEX CASE**

The Parties agree that this action is *not* sufficiently complex for the Manual for Complex Litigation to be used.

**III. SUBJECT-MATTER JURISDICTION**

Federal jurisdiction is invoked upon federal question grounds pursuant to 28 U.S.C. § 1331 and Plaintiff’s Fair Labor Standards Act (“FLSA”) claim, pursuant to 29 U.S.C. § 201 *et seq.* and § 216(b). Plaintiff also brought claims under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.* After a meet and confer discussion between counsel for the Parties, Plaintiff subsequently decided to dismiss her claims under ERISA and proceed only with her claim under the FLSA.

All parties have been served and no issues regarding personal jurisdiction or venue exist.

No related cases or proceedings are pending before another judge of this or another court or administrative body.

1 The Parties have either filed or at this time are concurrently filing their  
 2 “Certification as to Interested Parties or Persons.” Those with an interest in the  
 3 outcome of the proceeding include Dominique Osborne, The Prudential Insurance  
 4 Company of America, Inc., and Prudential Financial, Inc.

#### 5 **IV. DISCOVERY**

##### 6 **A. Rule 26 Disclosures**

7 The Parties mutually exchanged the initial disclosures required under  
 8 F.R.C.P. 26(a)(1) on June 11, 2010.

9 Plaintiff’s disclosures included Plaintiff’s payroll stubs for the period of her  
 10 employment with Defendant. Defendant’s disclosures included policies regarding  
 11 payroll practices in effect at the location where Plaintiff worked, policies regarding  
 12 recording hours worked in effect at the location where Plaintiff worked, Plaintiff’s  
 13 human resources file, Plaintiff’s payroll records, Plaintiff’s building access  
 14 records, Plaintiff’s call center log in and out records, Plaintiff’s instant messages  
 15 and email messages stored electronically, Plaintiff’s productivity records, and  
 16 Plaintiff’s performance evaluation records.

##### 17 **B. Discovery Taken to Date**

18 The Parties will exchange documents, electronically stored information and  
 19 tangible things required by F.R.C.P. 26(a)(1)(a)(ii) by mutual agreement or in  
 20 response to a formal discovery request. The description, category and location of  
 21 the documents, electronically stored information and tangible things have been  
 22 disclosed in the Parties’ initial disclosures.

##### 23 **C. Scope of Anticipated Discovery**

24 Plaintiff’s Response: Plaintiff’s discovery will initially include the F.R.C.P.  
 25 30(b)(6) depositions of Defendant’s persons most knowledgeable regarding the  
 26 operation of the call center where Plaintiff worked and the payroll and time  
 27 recording practices of the call center where Plaintiff worked. Plaintiff also intends  
 28 to depose persons most knowledgeable for Defendant’s nationwide call center

1 operations. Plaintiff may also serve requests for production of documents  
2 regarding Defendant's policies, procedures and payroll practices applicable to  
3 Defendant's call center operations. Plaintiff agrees that Defendant may seek a  
4 reasonable protective order regarding its confidential proprietary information  
5 regarding its business operations.

6 Defendant's Response: Defendant's initial discovery will include the  
7 deposition of Plaintiff and a request for production of documents from Plaintiff.  
8 Defendant may also seek to take the depositions of current or former employees  
9 who worked with Plaintiff. Defendant contends that it is inappropriate to extend  
10 discovery beyond the location where Plaintiff worked prior to an adequate showing  
11 of potential class-wide conduct and class-wide damages.

12 **D. Discovery Plan**

13 Plaintiff's Response: Plaintiff proposes that Plaintiff's deposition be taken  
14 in July 2010 on a mutually agreeable date. After Plaintiff's deposition is  
15 completed, Plaintiff will take the F.R.C.P. 30(b)(6) depositions of Defendant's  
16 persons most knowledgeable regarding the operation of the call center where  
17 Plaintiff worked and the payroll and time recording practices of the call center  
18 where Plaintiff worked. Plaintiff also intends to depose persons most  
19 knowledgeable for Defendant's nationwide call center operations. Plaintiff also  
20 plans to serve a request for production of documents concerning the policies,  
21 procedures, and payroll practices of the Defendant's call centers.

22 Defendant's Response: Defendant agrees to take Plaintiff's deposition in  
23 July 2010 on a mutually agreeable date. Defendant also plans to serve a request  
24 for production of documents from Plaintiff. Defendant may also seek to take the  
25 depositions of current or former employees who worked with Plaintiff. Defendant  
26 contends that it is inappropriate to extend discovery beyond the location where  
27 Plaintiff worked prior to an adequate showing of potential class-wide conduct and  
28 class-wide damages.

1           **E. Fact and Expert Discovery Cutoff Dates**

2           The Parties have agreed to a fact discovery cutoff date of June 1, 2011. The  
3 Parties have agreed to mutually exchange their expert disclosures in accordance  
4 with F.R.C.P. 26(a)(2). The Parties propose an expert discovery cutoff date of 30  
5 days before trial, which includes requiring all expert depositions to be taken by this  
6 date as well. The Parties agree to a fact discovery motion cutoff date for hearing  
7 fact discovery motions no later than July 1, 2011.

8           **F. Electronic Discovery**

9           Plaintiff's Response: Plaintiff contends that the Parties should comply with  
10 F.R.C.P. 34 with respect to electronic discovery and other electronic  
11 communications, with the exception that non-payroll and non-timekeeping  
12 electronic documents do not need to be produced in native format. The Parties are  
13 preserving documents that they deem relevant to the claims and defenses in this  
14 case.

15           Defendant's Response: Defendant contends that the Parties should comply  
16 with F.R.C.P. 34 with respect to electronic discovery and other electronic  
17 communications, with the exception that electronic documents do not need to be  
18 produced in native format. Defendant objects to production of electronic  
19 documents in native format because payroll data includes multiple elements of  
20 private data, including third-party names, social security numbers, pay rates, state  
21 and federal withholdings deductions and benefit information, and because  
22 timekeeping data includes confidential and proprietary information regarding  
23 software, passwords, codes, and programs. The Parties are preserving documents  
24 that they deem relevant to the claims and defenses in this case.

25           **G. Issues of Privilege and/or Privacy Rights**

26           Given that Plaintiff seeks to pursue a collective action involving third  
27 parties, the confidentiality of third-party information must be maintained. To the  
28 extent Plaintiff seeks information subject to rights of privacy under federal or state

1 law, the Parties will meet and confer to determine whether adequate safeguards  
2 may be imposed to protect such privacy rights. If the Parties cannot agree, either  
3 party may file a discovery motion with the Court. The Parties agree that a  
4 stipulated protective order will be entered to protect confidential, proprietary  
5 information regarding Defendant's business operations.

6 **V. STATEMENT OF CLAIMS AND DEFENSES**

7 **A. Plaintiff's Statement of Claims**

8 Plaintiff claims a violation of the FLSA on the grounds that Defendant had  
9 uniform policies at all of its nationwide call centers which required her and other  
10 similarly situated call center employees to perform unrecorded pre-shift and post-  
11 shift work without pay in an amount of up to approximately 15 minutes per day.  
12 Plaintiff claims that this case is appropriate for certification as a collective action  
13 under 29 U.S.C. §216.

14 **B. Defendant's Statement of Defenses**

15 Defendant contends that there has been no violation of the FLSA because  
16 Plaintiff and other similarly situated employees were not required to perform pre-  
17 shift or post-shift work without pay and because there was no policy requiring any  
18 work without pay during the applicable period of this lawsuit. To the contrary,  
19 Defendant's policies required employees to record all time worked so that all time  
20 worked would be paid. Indeed, Defendant paid Plaintiff and other similarly  
21 situated employees for 7.5 hours each day, while requiring only 7.0 hours of work.  
22 Defendant was only required to provide two 10 minute breaks under California  
23 law, but also provided a third 10 minute break, for a total of 30 minutes of paid  
24 break time each day. Defendant also provided a daily unpaid 30 minute lunch  
25 break. Defendant contends that various electronic records show that Plaintiff  
26 typically arrived at the office building where she worked approximately five  
27 minutes before her scheduled shift and stopped working at the end of her shift.  
28 Defendant also contends that its policies required Plaintiff to record all time

1 worked, including time before or after her scheduled shift. Thus, any time  
2 allegedly worked before or after Plaintiff's shift was either already compensated or  
3 de minimis.

4 Defendant finally contends that this case is not appropriate for certification  
5 as a collective action under 29 U.S.C. § 216 because Plaintiff cannot offer any  
6 evidence that Defendant engaged in any class-wide or pattern of unlawful conduct  
7 and Plaintiff also cannot establish class-wide damages.

8 **C. Calculation of Damages**

9 Plaintiff's Response: Plaintiff contends that individual or class-wide  
10 damages should be calculated based on the amount of uncompensated time  
11 Plaintiff and any opt-in plaintiffs worked and the individual's applicable hourly  
12 rate. Based on an estimate of 15 minutes of uncompensated time daily for a class  
13 of approximately 1,000 individuals employed at an hourly rate of \$20 per hour for  
14 three years, class-wide damages are estimated to be \$3.9 million. Plaintiff also  
15 seeks liquidated damages, statutory interest, costs and attorneys' fees.

16 Defendant's Response: Defendant contends that Plaintiff cannot meet her  
17 burden to show individual or class-wide damages because Plaintiff cannot show  
18 she worked without pay before or after her scheduled shift and Plaintiff also cannot  
19 show any evidence of any class-wide or pattern of unlawful conduct. Defendant  
20 further contends that if there are isolated instances of uncompensated time, each  
21 instance will require individualized proof, including the determination of  
22 individualized issues of credibility.

23 **D. Principal Factual Issues in Dispute**

24 Plaintiff's Response: Plaintiff contends that she worked up to 15 minutes of  
25 uncompensated pre-shift and post-shift time daily. Plaintiff contends that  
26 Defendant had two (2) policies requiring all call center employees to arrive early  
27 and stay late as part of their continuous workday duties. Furthermore, Plaintiff  
28 contends that Defendant's timekeeping policy was such that accurate records were

1 not kept as required by federal law. As a result, Plaintiff also contends that all  
2 such pre-shift and post-shift work time was both unrecorded and uncompensated.

3 Defendant's Response: Defendant contends that the principal factual issues  
4 in dispute are (1) whether Plaintiff worked any uncompensated pre-shift or post-  
5 shift time and (2) whether Plaintiff prevented Defendant from being aware of any  
6 uncompensated pre-shift or post-shift time by her failure to adhere to Defendant's  
7 time recording procedures.

8 Defendant contends that Plaintiff worked for Defendant on a regularly  
9 scheduled eight hour shift from 8:00 a.m. to 4:00 p.m. Defendant contends that  
10 Plaintiff's eight hour shift included pay for 7.5 hours per day while requiring only  
11 7.0 hours of work. Defendant contends that Plaintiff did not work uncompensated  
12 pre-shift and post-shift time daily and was paid for all time worked. Defendant  
13 further contends that its policies required Plaintiff to record all time worked and  
14 Defendant's timekeeping system allowed Plaintiff to record increments of even  
15 one minute of additional work beyond her scheduled shift time. Defendant finally  
16 contends that there was no policy requiring any work without pay during the  
17 applicable period of this lawsuit. To the contrary, Defendant's policies required  
18 employees to record all time worked so that all time worked would be paid.

19 **E. Principal Legal Issues in Dispute**

20 The Parties agree that the legal issues are not in dispute. The requirements  
21 for paid work time are set forth in the FLSA, 29 U.S.C. § 201 *et seq.*, the Code of  
22 Federal Regulations applicable to the FLSA and the case law interpreting the  
23 FLSA.

24 The Parties also agree that the standard of certification as a collective action  
25 is set forth in the FLSA, 29 U.S.C. § 216(b) and the case law relating to FLSA  
26 collective actions.

27 The Parties agree that the legal authorities referenced above will determine  
28 (1) whether Defendant violated the FLSA by allegedly failing to pay Plaintiff for

1 all time worked; (2) whether Plaintiff has suffered any monetary damages as a  
 2 result of Defendant's alleged conduct; (3) whether Plaintiff is similarly situated to  
 3 potential opt-in plaintiffs; (4) whether Plaintiff can prove individual or class-wide  
 4 damages; and (5) whether Plaintiff's claims are amenable to a collective action  
 5 under 29 U.S.C. § 216(b).

6 **F. Unusual Legal Issues Presented by the Case**

7 The Parties do not anticipate that any unusual legal issues will be presented.

8 **VI. MOTION PRACTICE**

9 Plaintiff will file a motion for collective-action certification within the time  
 10 limits proscribed by Local Rule 23-3. Plaintiff will also file a motion to equitably  
 11 toll applicable statute of limitations for the opt-in class and issue class-wide notice.

12 Defendant will file a motion for summary judgment as to Plaintiff's  
 13 individual claims. Defendant will also file a motion to preclude collective-action  
 14 certification.

15 The Parties propose a motion cutoff date of July 1, 2011, meaning that all  
 16 non-discovery motions shall be filed and served by July 1, 2011, to be heard  
 17 pursuant to the notice requirements imposed by Local Rule 6-1.

18 **VII. ADDITIONAL PARTIES, CLAIMS, OR DEFENSES**

19 The Parties do not anticipate naming any additional parties, claims, or  
 20 defenses, other than defenses listed here and affirmative defenses listed in  
 21 Defendant's Answer. The Parties agree that Plaintiff will dismiss her second and  
 22 third causes of action under ERISA on or before June 21, 2010. Defendant  
 23 proposes a deadline to amend pleadings of June 21, 2010. Plaintiff contends that  
 24 the deadline for amending pleadings should not occur until the close of discovery.

25 **VIII. TRIAL**

26 The Parties propose a trial date of early-September 2011 with a final pretrial  
 27 conference to be held in mid-August 2011. The Parties estimate that the trial will  
 28 take about ten (10) full court days.

1 Plaintiff's FLSA claim may be tried by a jury. If a collective action is  
 2 certified, Plaintiff will have the burden of proving class-wide evidence of a  
 3 violation of the FLSA for failure to pay wages for all time worked and proving that  
 4 the damages can be ascertained by class-wide evidence to be presented during trial.

5 **IX. SETTLEMENT**

6 The Parties have not been able to reach any potential resolution of this  
 7 matter at this time. Plaintiff believes that settlement prospects are likely to  
 8 increase after the exchange of initial discovery. The Parties are amenable to a  
 9 settlement conference before a magistrate judge after the issue of collective action  
 10 certification is decided.

11 **X. INSURANCE COVERAGE**

12 Defendant is unaware of any policy of insurance applicable to this litigation.

14 DATED: June 14, 2010

**TEEPLE HALL, LLP**

16 By: /s/ Jason N. Black  
 17 JASON N. BLACK  
 18 Attorneys for Plaintiff  
 19 DOMINIQUE OSBORNE

20 DATED: June 14, 2010

**SEYFARTH SHAW LLP**

22 By: /s/ Jon D. Meer  
 23 JON D. MEER  
 24 Attorneys for Defendant  
 25 THE PRUDENTIAL INSURANCE  
 26 COMPANY OF AMERICA, INC.  
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